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Clean Air Rules To Be Relaxed

EPA Will Ease Power Plants' Requirements

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The Bush administration has decided to allow thousands of the nation's dirtiest coal-fired power plants and refineries to upgrade their facilities without installing costly anti-pollution equipment, as they now must do.

Acting Environmental Protection Agency Administrator Marianne L. Horinko said yesterday that she will sign the new regulation next week, and that the measure will take effect this fall. The decision marks an important, cost-saving victory for the utility industry, which has vigorously lobbied the administration for the past 21/2 years to relax the Clean Air Act enforcement program.

That program, known as New Source Review, generated dozens of state and federal lawsuits against 51 aging power plants during the Clinton administration, and forced some of them to agree to install hundreds of millions of dollars of pollution-control equipment.

Earlier this month, a federal judge ruled that FirstEnergy's Ohio Edison Co. violated the law by upgrading seven coal-fired power plants without installing pollution equipment -- the first time a judge has ruled against a utility in those cases.

Industry advocates have complained that the current enforcement system is confusing, and has discouraged investment and expansion at a time of increased demand for expanded and reliable sources of power. Industry and EPA officials said yesterday the new rule would encourage plant improvements, provide greater regulatory certainty and reduce dangerous emissions.

"I think it will provide more fairness and predictability for facilities," Horinko said in an interview. "We're hoping to provide a bright line of clarity on the national level that you can't get from the scattershot approach" of the existing enforcement program.

But environmentalists, state officials and congressional Democrats who have long fought the rule change -- which was first reported yesterday in the New York Times -- warned that it would undermine the only effective tool to combat industrial polluters. They said it would allow antiquated industrial plants that should have been shut down years ago to go on polluting -- or even increase pollution -- without fear of prosecution.

Sen. John F. Kerry (D-Mass.), a presidential candidate, charged that President Bush is giving major polluters a "get out of jail free" card, and that the new rule had "literally pulled the rug out from under every governor's efforts to curb air pollution."

Sen. John Edwards (D-N.C.), another presidential challenger, called on Utah Gov. Michael Leavitt, Bush's nominee to succeed Christine Todd Whitman as EPA administrator, to stand up against the new rule. "If Governor Leavitt cares about our air, about kids with asthma, and about seniors with lung problems, he will tell George Bush to scrap this rule before it goes into effect," Edwards said.

New York Attorney General Eliot Spitzer, a leader in the effort to prosecute utility polluters, has said he would file a court challenge to the new rule as soon as it is published, probably shortly after Labor Day.

Under the rule change, industry could potentially save billions of dollars in pollution-control equipment costs while continuing to emit hundreds of thousands of tons of pollutants.

The Clean Air Act requires new plants and utilities to install the best available pollution-control technology. However, plants and refineries built before 1970 are exempt from having to install modern "scrubbers" unless they undertake extensive and costly improvements that boost power production and pollution. Industry officials have long complained that the distinction between "routine maintenance" and more substantial improvements is too vague.

Under the new rule, older plants could avoid installing pollution controls when they replace equipment - even if the upgrade increases pollution -- provided the cost does not exceed 20 percent of the cost of replacing a plant's essential production equipment, and the new parts are the "functional equivalent" of the worn-out equipment.

For example, if a coal-fired power plant replaces a boiler at a cost that is less than 20 percent of the combined replacement cost of the boiler, turbine, generator and other equipment, the company would not have to install devices to control the additional pollution. However, the regulation would not relieve plants of continuing to meet air pollution targets set in 1990 for reducing levels of sulfur dioxide, nitrogen oxide and fine particles that pose public health problems.

A draft of the final rule was obtained by the Natural Resources Defense Council and made available to The Washington Post. EPA officials cautioned that they are still putting final touches on the rule and would not confirm the 20 percent replacement threshold.

NRDC officials noted that if the new rule had been in effect during the Clinton administration, the Justice Department never could have brought charges against Ohio Edison and other major utilities.

"The Bush administration, using an arbitrary Enron-like accounting gimmick, is authorizing massive pollution increases to benefit Bush campaign contributors at the expense of public health," said John Walke, director of NRDC's Clean Air Project.

Industry officials said they had not seen the details of the rule but predicted that the measure, as reported, could be a boon to energy producers that will promote new upgrades and investment.

"It's extremely important and a good sign if there's going to be a percentage allowance," said Scott Segal, executive director of the Electric Reliability Coordinating Council, a utility advocacy group.

Quin Shea, a senior official of the Edison Electric Institute, the main lobbying arm of the utility industry, said, "This on a whole is a favorable development for electrical reliability and routine maintenance."

"I can assure you there are a lot of companies that held back on what we consider routine maintenance out of fear of triggering New Source Review actions," he added.

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